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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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| <b>2001 Senate Bill 28</b>  | <b>Senate<br/>Substitute Amendment 1</b> |
| Memo published: March 8, 2001      Contact: Ronald Sklansky, Senior Staff Attorney (266-1946) |  |

Under *Senate Substitute Amendment 1*, a law enforcement officer, an emergency medical technician (EMT) or a hospital emergency room staff person may take a child who the person reasonably believes is 72 hours old or younger (a “newborn”) into custody if the parent relinquishes custody to him or her and expresses the intent not to return for the newborn. A parent may also call 911 to have a law enforcement officer or EMT meet the parent and take the child into custody.

The person taking custody must then take any action necessary to protect the health and safety of the newborn and, within 24 hours, deliver the newborn to a juvenile court intake worker.<sup>1</sup> The person must also file a birth certificate for the child within five days of taking the child into custody.

### **Right to Remain Anonymous**

Under the substitute amendment, a parent who relinquishes custody of a newborn and any person who assists the parent in relinquishing the newborn have the right to remain anonymous and may leave the presence of the law enforcement officer, EMT or hospital emergency room staff person who took custody of the newborn at any time. No one may induce, coerce or attempt to induce or coerce a parent or other person to reveal his or her identity or may follow or pursue the parent or other person *unless* the

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<sup>1</sup> A juvenile court intake worker determines whether to release a child or hold a child in custody, if certain grounds exist. For example, a child may be held in custody if there is probable cause to believe that the child is within the jurisdiction of the juvenile court and that the child’s parent is unavailable to provide care and supervision for the child and services to ensure the child’s safety and well-being are not available or would be inadequate. If an intake worker decides to hold the child in custody, a hearing must be held to determine whether to continue custody and a petition alleging the child is in need of protection or services must be filed with the juvenile court.

person has reasonable cause to suspect that the child has been abused or neglected<sup>2</sup> or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

In addition, no officer, employee or agent of the state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a newborn or any person who assists the parent unless one of the above exceptions applies.

### **Information for Parent**

Under the substitute amendment, a law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody must make available to the parent relinquishing custody the maternal and child health toll-free number maintained by the Department of Health and Family Services (DHFS). The decision whether to accept the information is entirely voluntary on the part of the parent.

### **Immunity from Liability**

Under the substitute amendment, a parent who relinquishes custody of his or her newborn and any person who assists the parent are immune from civil or criminal liability for any good faith act or omission ***in connection with that relinquishment***. This includes immunity for exercising the right to remain anonymous and the right to leave at any time. In addition, it includes immunity from criminal prosecution for child abandonment and child neglect.

Also under the substitute amendment, any law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody is provided immunity from civil or criminal liability. This immunity is limited to immunity from civil liability to the child's parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child from the child's parents, but does not include immunity for any act or omission occurring in subsequently providing care for the child.

### **Confidentiality**

Under the substitute amendment, information relating to the relinquishment of a newborn is confidential and may not be disclosed except to specified persons.

### **Administrative Rules**

The substitute amendment requires DHFS to promulgate rules to implement the statutory provisions relating to permitting a parent to relinquish custody of a newborn. In promulgating the rules, DHFS must consider the different circumstances under which a parent might relinquish a newborn. The rules must include provisions prescribing a means by which a parent who relinquishes custody of a

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<sup>2</sup> This provision references the definition of "neglect" contained in s. 48.981 (1) (d), Stats. That section defines "neglect" as failure, refusal or inability on the part of a parent, guardian, legal custodian, or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

newborn may, until the granting of a termination of parental right (TPR) order, choose to be identified as the child's parent.

### **Child in Need of Protection or Services Grounds**

The substitute amendment creates a basis upon which the juvenile court has jurisdiction over a newborn whose custody has been relinquished as a child in need of protection or services.<sup>3</sup>

### **TPR Grounds and Notice of TPR Proceedings**

The substitute amendment creates a basis for involuntary TPR under which the court must find that the parent relinquished custody of the child when the child was 72 hours old or younger.<sup>4</sup> In addition, the substitute amendment provides that notice is not required to be given to a parent who has relinquished custody of a newborn as provided in the substitute amendment and exercised the right to remain anonymous. The substitute amendment specifies that a person who is not given notice does not have standing to appear and contest a TPR petition. This provision does not apply, however, to a parent who chooses to be identified as the child's parent prior to the granting of a TPR order.

### **Effective Date**

The substitute amendment first applies to a newborn whose custody is relinquished on the effective date of the act.

On March 8, 2001, the Senate Committee on Judiciary and Consumer Affairs recommended Senate Bill 28, as amended by Senate Substitute Amendment 1, for passage on a vote of Ayes, 5 and Noes, 0.

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<sup>3</sup> If a child is found to be in need of protection or services, the juvenile court may impose certain dispositions including placing the child in a foster home and transferring legal custody to the county department of human or social services, a licensed child welfare agency or, in Milwaukee County, DHFS.

<sup>4</sup> The juvenile court must terminate the parental rights of a child's parents before the child may be adopted. Involuntary termination of these rights may only be granted if one of several specified grounds is met and the court finds that the termination is in the best interests of the child.